2027.

SUPREME COURT OF THE UNITED STATES.

No. 188.

WM. D. NUTT, EXECUTOR OF ALEXANDER HUNTER, DECEASED, PLAINTIFF IN ERROR,

vs.

PHILIP H. MINOR.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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GIDEON, Print.

UNITED STATES OF AMERICA.

The President of the United States, to the judges of the circuit court of the District of Columbia, sitting for the county of Washington:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, or some of you, wherein Philip H. Minor is plaintiff, and Wm. D. Nutt, executor of Alex. Hunter, is defendant, a manifest error hath happened to the great damage of the said defendant, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court.

Issued this 8th day of May, 1850.

JOHN A. SMITH, *Clerk*.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Philip H. Minor, greeting.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the District of Columbia, for the county of Washington, wherein William D. Nutt, executor of Alexander Hunter, is plaintiff in error, and you are defendant in error; to show cause, if any there be, why judgment rendered against the said William D. Nutt, executor as aforesaid, in the said writ of error mentioned, should not be corrected, and why full and speedy justice should not be done to the parties aforesaid in this behalf.

Witness the honorable W. Cranch, chief justice of the circuit court of the District of Columbia, this 18th day of May, 1850.

W. CRANCH.

Cited.

R. WALLACH, *Marshal*.

Know all men by these presents, that we, William D. Nutt, executor of Alexander Hunter, William Selden, and William B. Randolph, are held and firmly bound unto Philip H. Minor in the full and just sum of ten thousand dollars, current money of the United States; to which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this eighteenth day of May, in the year of our Lord one thousand eight hundred and fifty.

Whereas lately, at a circuit court of the District of Columbia, held for the county of Washington, at the city of Washington, on the fourth Monday of March, eighteen hundred and fifty, in a suit pending in the said court, wherein the said Philip H. Minor was plaintiff, and the said William D. Nutt, executor of Alexander Hunter, was defendant, judgment was obtained against the said defendant, and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said William D. Nutt, executor as aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next.

Now, the condition of the above obligation is such, that if the said William D. Nutt, executor as aforesaid, shall prosecute his writ with effect, and answer all damages and costs, if he fail to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

WILLIAM D. NUTT, [SEAL.]
Executor of Alexander Hunter, deceased.
WILLIAM SELDEN, [SEAL.]
WM. B. RANDOLPH. [SEAL.]

Signed, sealed, and delivered in the presence of—
HOPKINS LIGHTNER,
A. MCLEAN.

Approved.

W. CRANCH.

Style of court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit [court] of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fourth.

Present, the honorable William Cranch, chief judge; James S. Morsell and James Dunlop, assistant judges; Richard Wallach, esq., marshal; Jno. A. Smith, clerk.

2029

In the record of proceedings of the said court, among others, are the following, to wit:

Parties.

PHILIP H. MINOR
vs.
WILLIAM D. NUTT, ex'r of Alexander Hunter.

Be it remembered, that heretofore, to wit, on the twentieth day of December, in the year of our Lord one thousand eight hundred and forty-nine, the said Philip H. Minor, by Philip R. Fendall, esq., his attorney, and the said William D. Nutt, by Joseph H. Bradley, esq., his attorney, filed with the clerk of the said circuit court here an agreement in the words and of the tenor following, to wit:

Agreement of counsel.

It is hereby agreed by the undersigned, the respective counsel of the parties in the annexed declaration named, that a suit between the said parties be docketed by consent of parties, and said declaration be filed.

P. R. FENDALL, *for plt'ff*,
JOS. H. BRADLEY, *for defd't*.

20th Dec., 1849.

And thereupon the said Philip H. Minor, the plaintiff, by Philip R. Fendall, esq., his counsel, declared in the said circuit court here against the said William D. Nutt, administrator of Alexander Hunter, deceased, in a plea of trespass on the case, &c., in the words and of the tenor following, to wit:

Nar.

DISTRICT OF COLUMBIA,
Washington county, to wit:

William D. Nutt, executor of all and singular the goods and chattels, rights and credits, which were of Alexander Hunter, late of the county aforesaid, deceased, was summoned to answer unto Philip H. Minor in a plea of trespass on the case, and so forth; and whereupon the said plaintiff, by Philip R. Fendall and J. M. Carlisle, his attorneys, complain that, whereas heretofore, to wit, on the 22d day of June, in the year of our Lord eighteen hundred and forty-eight, at the county aforesaid, said Alexander, in his lifetime, was indebted unto said plaintiff in the sum of ten thousand dollars for the work and labor, care, diligence, and attendance of the said plaintiff before them done, performed, and bestowed by the said plaintiff in and about the business of the said Alexander, in his lifetime, for him and at his special instance and request; and also in another like sum of money for sundry matters and things properly chargeable in an account as by a particular account filed herewith appears; and being so indebted, the said Alexander, in his lifetime, in consideration thereof, afterwards, to wit, on the day and

year aforesaid, at the county aforesaid, undertook and faithfully promised said plaintiff to pay him the said sum of money whenever afterwards he, the said Alexander, should be therewith required. And whereas, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, said Alexander, in his lifetime, accounted to and with the said plaintiff of and concerning divers other sums of money before them due and owing from the said Alexander, in his lifetime, to the said plaintiff, and then in arrear and unpaid; and, upon such accounting, the said Alexander was then and there found indebted unto the said plaintiff in the further sum of ten thousand dollars; the said Alexander, in his lifetime, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and faithfully promised said plaintiff to pay him the said last sum of money whenever afterwards he should be required.

Nevertheless, the said Alexander, in his lifetime, nor the said defendant, his executor, since his death, hath not paid said sums of money, or any part thereof, to said plaintiff, although often thereto requested, to wit, on the day and year aforesaid, and often afterwards, at the county aforesaid; but so to do, the said Alexander, in his lifetime, and the said defendant, since his death, have wholly failed and refused, and said defendant, executor as aforesaid, still does so, to the damage of the said plaintiff in the sum of twelve thousand dollars, and therefore he brings suit, &c.

JOHN DOE & RICHARD ROE.

For the plaintiff, pledges, &c.

FENDALL & CARLISLE.

Parties appear.

And thereupon, at the October term of the said court, to wit, on the said twentieth day of December, in the year one thousand eight hundred and forty-nine, come into the said circuit court here the parties aforesaid by their attorneys aforesaid; and the said plaintiff, by his attorney aforesaid, prays that the said defendant may answer to the declaration of him, the said plaintiff, in the plea aforesaid. Whereupon it is ruled by the said circuit court here, that the said defendant answer to the declaration of the said plaintiff in the plea aforesaid; and if the said defendant doth not answer to the declaration of the said plaintiff in the plea aforesaid, judgment will be rendered against him by default; and the said defendant, by his said attorney, defends the force and injury, when, &c., and prays leave of the court here to imparle until the fourth Monday in March next, to answer to the declaration of the said plaintiff in the plea aforesaid, and he hath it. The same day is given to the said plaintiff, then, &c.

March term, 1850.

At which said fourth Monday of March, until which day the said defendant had leave to imparle, and then to answer to the declaration of the

said plaintiff in the plea aforesaid, comes as well the said plaintiff as the said defendant, by their attorneys aforesaid; and the said defendant, by his said attorney as before, defends the force and injury, when, &c.,

Plea.

and saith that he, the said defendant, did not undertake or promise in manner and form as the said plaintiff above complained against him; and of this he puts himself upon the country, &c.; and the plaintiff, in like manner, &c. Therefore, as well to try the said issue above joined between the said parties, as to inquire of and assess the damages of the said plaintiff by reason of the non performance of the said several promises and undertakings in the said declaration mentioned, in case the said issue shall be found for the said plaintiff,

Venire.

let a jury thereupon appear before the court here immediately, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c. Whereupon, for trying the issue aforesaid, it is ordered by the court here, that twenty persons from the panel of petit jurors, returned to the court here by the marshal of the District of Columbia, be drawn by ballot, according to the act of assembly in such case made and provided; and thereupon the twenty jurors being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties; and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called come; that is to say—

Jury.

Elijah Edmonston,	Daniel Hauptman,
Robert Brooke,	Richard Schekels,
Richard M. Beale,	John Suter,
Thos. J. Magruder,	George S. Noyes,
William P. Dunn,	Samuel Grubb,
William Lord,	George M. Sothoron.

Verdict.

Who being empannelled and sworn to say the truth in the premises, upon their oaths do say, that the said defendant did undertake and promise, in manner and form as the said plaintiff within against him complains; and they assess the damages of the said plaintiff, by reason of the non-performance of the promise and assumption aforesaid, to the sum of five thousand and fifty-five dollars and seventy-three and a half cents, with interest on four thousand five hundred and eighty-nine dollars and seven cents, part thereof, from the 22d day of February, in the year eighteen hundred and forty-seven; and also on the sum of four hundred and sixty-six dollars and sixty-six and two-third cents,

other part thereof, from the 22d day of June, in the year eighteen hundred and forty-eight, till paid, as he, the said plaintiff above, by declaring supposes. Whereupon the said plaintiff, by his said attorney, prays judgment, and those damages so by the jury aforesaid assessed, together with his costs and charges by him about his suit in this behalf laid out and expended, to him to be adjudged.

Judgment to bind, &c.

Therefore, it is considered by the court here, that the said plaintiff recover against the said defendant, as well the said sum of five thousand and fifty-five dollars and seventy-three and a half cents, current money, in manner and form as by the jury aforesaid assessed, for his damages so above adjudged to be sustained by reason of the non-performance of the said promises and undertakings, as the sum of twenty-three dollars and fifty cents for his costs and charges by him about his suit in this behalf laid out and expended; to be levied of the proportion of the goods and chattels which were of the said Alexander Hunter at the time of his death, and which are or have been in, or shall hereafter come to, the hands of the said defendant to be administered, and which may be subject to the said damages, costs, and charges in a legal course of administration; if so much thereof are or have been in, or shall hereafter come to, the hands of the said defendant to be administered as aforesaid; and if so much thereof are not nor have been in the hands of the said defendant to be administered as aforesaid, then the costs and charges aforesaid to be levied of the proper goods and chattels of the said defendant.

Ref. to auditor.

And because the amount of assets in the hands of the said defendant, and just claims against the said deceased, are unknown to the court here, therefore William Redin, of Washington county, gentleman, is appointed by the court here as auditor to ascertain the sum for which judgment shall be given for the said plaintiff in this behalf; and the said auditor, having regard to the amount of assets in the hands of the said defendant, and the debts due to other persons, shall make his report thereof to the court here, &c.

Auditor's report.

And now here at this day, to wit, the eleventh day of May, in the year of our Lord eighteen hundred and fifty, come into court here the parties aforesaid, by their attorneys aforesaid, and the said auditor makes his report to the court here in manner and form following, to wit:

PHILIP H. MINOR
vs.
WM. D. NUTT, ex'r of Alexander Hunter.

Judgment in the circuit court of the district of Columbia, for Washington county, March term, 1850.

By direction of the said court, I am ordered to audit the above judgment, and ascertain the proportion of assets to which the same is entitled. You will please, therefore, to take notice, that on Saturday next, the 11th day of May next, I shall proceed to perform that duty at ten o'clock in the forenoon, at my office in the City Hall, Washington, when and where you are required to attend and settle your administration.

W. REDIN, *Auditor*.

6th May, 1850.
To W. D. NUTT, esqr., *Executor*.

Which said notice was endorsed in the manner following, to wit:
I hereby certify, that I served the within notice, by leaving a copy thereof with the said defendant.

R. WALLACH, *Marshal*.

Judgment in circuit court. March term, 1850.

PHILIP H. MINOR
vs.
WM. D. NUTT, ex'r of Alex'r Hunter.

Reference to ascertain the proportion of assets to which the above judgment is entitled.

The notice hereto annexed was duly served on the above named defendant.

The plaintiff attended the audit by his counsel. By reference to the orphan's court of this county, it appears that the inventory of the personal estate of the deceased, returned by the defendant, amounted to the sum of $74,406 02. He has made statements there, which show he is entitled to credits to the amount of $6,552 12, exclusive of his commission; and, allowing these, a balance of assets to the amount of at least $60,000 would remain in his hands.

It is reported, therefore, that the defendant has assets sufficient to pay the above judgment in full.

Final judgment to be entered for $5,055 73⅓, with interest on $4,589 07, part thereof, from the 22d February, 1847; and on $466 66⅔, the residue thereof, from the 22d June, 1848; and $23 50 costs of suit; and $9 34, the cost of this reference and audit; and .5 of the marshal's fee for serving the notice.

W. REDIN, *Auditor*.

11th May, 1850.

After the preceding report had been written, the executor, Wm. D. Nutt, came in and admitted that he had ample assets to answer the

foregoing judgment, should the same be ultimately established against him.

W. REDIN.

11th May, 1850.

Final judgment.

Therefore it is considered by the court here, that the said plaintiff recover against the said defendant the said sum, so as aforesaid in the said report specified, of five thousand and fifty-five dollars and seventy-three and one-third cents, current money, with interest, in manner and form as the said auditor has therein ascertained, as well for his said damages so as aforesaid by the jury aforesaid assessed, as the sum of thirty-three dollars and thirty-four cents for his costs and charges by him about his suit in this behalf laid out and expended, regard being had to the amount of all the just claims against the said deceased, and of the goods and chattels, rights and credits, which were of the said Alexander Hunter, at the time of his death, remaining to be administered in the hands of the said defendant, to be levied of the said goods and chattels which were of the said Alexander Hunter, at the time of his death, remaining to be administered in the hands of the said defendant, if so much thereof in his hands to be administered he hath; and if so much thereof he hath not, then to be levied of the proper goods and chattels of the said defendant.

Test: JNO. A. SMITH, *Clerk*.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said plaintiff and defendant, by their respective counsel, filed in court here their respective statement of evidence hereinafter following; and the said defendant, by his attorney aforesaid, also filed in court here the hereinafter inserted bills of exception.

Test: JNO. A. SMITH, *Clerk*.

Plaintiff's statement of evidence.

PHILIP H. HUNTER
vs.
WM. D. NUTT, ex'r of Alexander Hunter.

Plaintiff's evidence.

On the trial of this cause the plaintiff, to maintain the issue on his part joined, gave evidence, tending to show that the defendant's intestate was from the day of 1834, to the 22d day of June, 1848, the marshal of the District of Columbia; and that during the whole of that time the plaintiff was occupied and wholly employed in the service of the defendant's testator, was the sole clerk in said marshal's office, besides rendering other general service there and in court;

that he was a remarkably skilful and accomplished clerk and book-keeper, and kept all the books and accounts of said office, the business of which was very large and profitable. That the plaintiff was occupied frequently at night, and always all day, in the business of the said office, and then proved by various witnesses that the said services were reasonably well worth the [annual] salary of eight hundred dollars and more, and that the services of the plaintiff in said office, had, in the opinion of the witnesses, been invaluable to the defendant's testator; and thereupon the plaintiff offered in evidence the following letter, the same being admitted by the defendant to have been received by his testator in his lifetime.

(Copied on page 31.)

And thereupon the plaintiff further offered evidence by William Minor, a brother of the plaintiff, and a competent witness, that the witness hearing the plaintiff complaining about the salary being too small, as he frequently did during the first year of the service, applied during the said year to the defendant's testator, with a view of calling his attention to the matter. That witness asked said testator how the plaintiff got on, and how he suited him; the testator replied "first rate," he suits me exactly, he will not let any body cheat me, and I believe if I wanted to do it he would not let me cheat any body else. That the conversation then turned on the insufficiency of the salary. The testator said, if I give it to him now it will do him no good, he will waste it or give it away, and made further remarks, the precise tenor of which the witness cannot remember, but which left the clear impression on the witness's mind that plaintiff's salary was to be increased after that year, and that the witness did accordingly so tell the plaintiff immediately after. That the witness does not remember whether the testator requested him to communicate this to the plaintiff, but he did so; that he was not requested by the plaintiff to apply to the testator, but did so of his own motion on hearing the plaintiff's complaint that he could not live on the salary he was then receiving; and the defendant having given evidence by said Minor, tending to prove an agreement for four hundred dollars per annum, the said witness, on his cross examination, testified that he is a brother to the plaintiff, and was the surety of the testator in his official bond, and was the deputy for the county of Alexandria; that he felt interested as surety that the accounts of the office should be accurately kept, and also interested to get the plaintiff employment; he therefore advised the testator to employ him; that the plaintiff came up from Alexandria with the witness, bringing a set of books, suitably headed, for the office, and in the marshal's room a conversation took place between the plaintiff, the testator, and the witness; that the testator proposed to give two hundred dollars, and that the witness should give one hundred dollars, making the salary $300; witness urged that it ought to be larger; testator said he was just in office and did not know what the profits of it would be, or what the

value of the duties, to be discharged by the plaintiff, would be, and that he did not feel justified in giving a larger salary; that witness offered the testator that if he, the testator, would pay two hundred and fifty dollars, he, witness, would pay one hundred and fifty towards the salary, which was agreed between them; that witness then took plaintiff aside and conversed with him out of the hearing of the testator, and advised him to take the offer for a year, small as it was; that accordingly the plaintiff assented, and an agreement for a year was then made for a salary of $400; that nothing was said about a continuance of the agreement after the first year; that in consequence of what passed there between the parties and the witness, he, the witness, in the conversation aforesaid, told the plaintiff that the substance of the matter was an agreement confined to one year, and that the compensation would be afterward made adequate to the services and the value of the office; and that the witness urged this upon the plaintiff as an inducement to agree to the engagement for the year. That the defendant's testator did not authorize witness to promise the plaintiff that he would be engaged after the first year at higher compensation, but witness made that representation in consequence of what was said in the conversation by the testator, and particularly from the reason assigned by the defendant's testator in the plaintiff's presence at that time, that he could not agree to give more then because he was not yet acquainted with the profits of the office, and was ignorant of the amount and value of the services to be required of the plaintiff.

Defendant's evidence.

And thereupon the defendant, to maintain the issue on his part joined, gave evidence to show that in the said month of April, 1834, the said plaintiff entered into the service of said Alexander Hunter under a special agreement, by which he agreed to serve for a salary of four hundred dollars a year, of which the said Hunter was to pay the sum of two hundred and fifty, and Daniel Minor, the brother of the plaintiff and deputy of said Hunter, for the county of Alexandria, was to pay one hundred and fifty dollars; that said Daniel Minor did in fact pay the said sum of one hundred and fifty dollars for the first year, and continued thereafter each and every year till June, 1847, when said Alexandria county was ceded to the State of Virginia, to pay and did pay to said plaintiff the said sum of one hundred and fifty dollars as his part of said salary, and the said Hunter continued to pay in each and every year during the same period the sum of two hundred and fifty dollars, of which an account current was kept by the plaintiff, in which on one side was an entry made by said Daniel Minor in the year 1834, as follows:

By your salary - - - -	$250
Amount to be paid by D. Minor - -	150

And on the other were entries to the debit of plaintiff of various sums paid to him from time to time by said Hunter, almost all of which

were in the handwriting of plaintiff, and runs on regularly from 10th April, 1834, to 9th July, 1848, and also a receipt given by plaintiff in a certain account made out by by him and wholly in his handwriting, except the signatures of D. Minor and T. Woodward.

(Inserted on page .)

And also another receipt given by him in another account made out by said plaintiff in his own handwriting, except the figures opposite the names of T. Woodward and Ph. H. Minor respectively, and also by said Daniel Minor; that when said Hunter received the said letter from plaintiff set out in plaintiffs' statement he sent for the witness, showed him said letter and account, denied the facts stated in them, and exhibited much indignation at the demand, and denied the statement made by plaintiff, and witness proposed to interpose and call on plaintiff and quiet him, and did in fact do so, when he ascertained that plaintiff was aware that Hunter had denied his statement and refused to see the said account, and threatened to sue immediately, but refrained at the pressing instance of witness, and agreed to remain in his said office not waiving any right he had.

Defendant's 1st bill of exception.

On the trial of the cause the plaintiff, to maintain the issue on his part joined, offered to read in evidence a letter from the plaintiff to said Hunter in his lifetime, dated the 17th day of February, 1847, it being admitted by the defendant that the same was received by his said testator in his lifetime and at the time of its date, (copied at page 31;) and it was further admitted that the plaintiff continued thereafter in the service of the defendant's testator so long as he was marshal, to wit, until the 22d day of June, in the year eighteen hundred and forty-eight, with his assent; to the admissibility of which letter as evidence in the cause the defendant by his counsel objected, but the court overruled said objection, and permitted the same to be read, and the same was read, and the defendant excepts thereto, and prays the court to sign and seal this his first bill of exceptions, and to cause the same to be enrolled according to the statute; all of which is done accordingly this 18th day of April, 1850.

JAS. S. MORSELL, [SEAL.]
JAS. DUNLAP. [SEAL.]

Defendant's 2d bill of exception.

On the further trial of this cause the defendant, in support of the issue on his part, prayed the court to direct the jury, if from the whole evidence aforesaid the jury shall find that the plaintiff in April, 1834, entered into the service of the deceased, Alexander Hunter, under an agreement to serve him as clerk for a salary of four hundred dollars a

year, of which said Hunter was to pay two hundred and fifty dollars, and Daniel Minor was to pay one hundred and fifty dollars, and thereafter the said plaintiff continued to serve said Hunter as clerk as aforesaid until the year 1847, when Alexandria was retroceded, and during all that time said Daniel Minor continued to pay the plaintiff $150 per annum, and said Hunter paid him at the rate of $250 per annum for the same period, these facts are evidence [from which the jury may infer] a special agreement between said Minor and said Hunter in his lifetime, to serve for four hundred dollars per year; [and if they do find such special agreement for the whole time of such service] the plaintiff is not entitled to recover in this action; which instruction the court refused to give as prayed, and at the instance of the plaintiff modifies the same as follows: (the modifications are embraced in the two preceding sets of brackets.) And defendant excepts thereto and prays the court to sign and seal this his second bill of exceptions, and to cause them to be enrolled according to the statue; which is done accordingly this 18th day of April, 1850.

JAS. S. MORSELL, [SEAL.]
JAS. DUNLAP. [SEAL.]

Defendant's third bill of exceptions.

On the further trial of this cause the defendant, in support of the issue on his part joined, prayed the court to direct the jury, that "if from the whole evidence aforesaid the jury shall find that in April, 1834, the plaintiff entered into the employment of the deceased to serve him as clerk at a salary of $400 for a single year, and thereafter continued to serve the said Hunter as clerk as aforesaid, during the whole time mentioned in said account and declaration, and that no new agreement (express or implied) was made between the said plaintiff and said Hunter, for a compensation different from that which was as aforesaid first agreed upon between them; and if they shall further find that said Hunter in his lifetime fully paid said plaintiff for his said services, at the rate aforesaid, then the plaintiff is not entitled to recover in this action; which instructions the court refused to give as prayed, but did modify the same by inserting the words "express or implied" between the words "agreement" and "was made;" and the defendant, by his counsel, excepts as well to the refusal of the court to give the instruction as prayed, as also to the giving the said instruction as modified as aforesaid, and prays the court to sign and seal this his third bill of exceptions, and to cause the same to be enrolled according to the statute; all which is done accordingly this 18th day of April, 1850.

JAMES S. MORSELL, [SEAL]
JAMES DUNLOP. [SEAL.]

Defendant's fourth bill of exception.

The defendant, in further support of the issue in this cause on his part joined, prayed the direction of the court, that if from the whole evidence the jury shall find that plaintiff entered into the service of said Alexander Hunter in his lifetime to serve him as clerk, at a certain salary of four hundred dollars for one year, and nothing was said between the parties as to any longer term of service, but the plaintiff did in fact remain and continue in said service for and during the whole time mentioned in said account and declaration, plaintiff is not entitled to recover in this action, unless he has proved to the satisfaction of the jury that a new agreement (express or implied) was made for said service; and if they find a new agreement for a specific salary was entered into between the said parties, the plaintiff is not entitled to recover, unless the jury shall find said Hunter expressly or impliedly agreed to pay him for said service such sum as he reasonably deserved to have therefor; which instruction as prayed the court refused to give, but gave the same with the insertion of the words "express or implied," after the words "new agreement," (herein before inserted between brackets.) To the refusal to grant which instruction as prayed, and to the granting of the same as modified by the court, the defendant, by his counsel, excepts, and prays the court to sign and seal this his fourth bill of exceptions; which is accordingly done this nineteenth day of April, 1850.

JAMES S. MORSELL, [SEAL.]
JAMES DUNLOP. [SEAL.]

WASHINGTON CITY, *February* 17, 1847.

General ALEXANDER HUNTER.

MY DEAR SIR: I was obliged some days since to send to you for some money to meet my pressing necessities, and Mr. Woodward brought me in return a check for fifty dollars only, although I absolutely required more. This has led me to an examination of the state of my account with you, and on consideration of the whole matter to come to some more settled and definite understanding with you as to the compensation to which I am entitled for my past services, and the terms on which I am to render them hereafter.

On your receiving your present office, my brother Daniel became one of your sureties, and at his earnest solicitations I agreed to take charge of the books and accounts for one year. We, none of us, knew then what labor, attention, or responsibility would be required in doing that, and we were all equally ignorant of the profits of your office. Under these circumstances, I was induced to undertake it for the first year at four hundred dollars. Before that year had expired, I ascertained, as I suppose you did, that it would require my constant and undivided attention to bring the business to a system, and to keep it in such condition, that instead of your becoming embarrassed in the dis-

charge of your duties, every thing should be plain and clear, and you should realize all the profits of the office. How far I faithfully and with judgment and discretion performed my part, may be inferred from the receipts which that year exhibited.

However that may be, at the end of the first year, I called your attention to the salary I was receiving, and then proposed to leave, unless it was increased; indeed, I declared I would not remain at that rate of compensation. You then promised me, in the presence of my brother, to increase it, to give me a handsome allowance, and, substantially, whatever might be reasonable. Satisfied with this, and relying on your promise, I continued, and have ever since given my whole time, and all my energies, to the discharge of my duties. In the mean time, you have from your office realized and secured an independent fortune, no small part of which has been the result of my care, and labor, and system. It is time, then, that this matter should be brought to a close. Twelve years of the most vigorous part of my life have been spent in accumulating a fortune for you, and I am just where I was when I began with you, except that I owe some debts which I find it now out of my power to pay.

I have deliberated with myself calmly, and endeavored to put myself as an indifferent person, while I reflected on this subject, as though I was fixing a rate for another; and thus deliberating, with a full knowledge of the toil, the anxiety, and responsibility of the office I have held, I am persuaded the sum I have fixed is most moderate, say too low. But I have considered all the circumstances, the length of time which has elapsed, and my situation, and I have fixed it at eight hundred dollars per annum after the first year. I am satisfied with this. I do not think you can for a moment wish to put it lower. I have therefore stated an account on the basis I have stated, first for one year at four hundred dollars, and afterwards at the rate of eight hundred dollars per annum for the residue of the time. I have given credit on the other hand for every dollar I have received from you and from my brother Daniel, to which of course you are fairly entitled, and struck the balance. That account is herewith enclosed.

You will recollect in considering it, not only that I have had the duties of clerk to perform, but from time to time those of bailiff, and crier, and deputy marshal, and messenger, and even sweeper have devolved on me; in short, that my hands have always been ready to do any thing which was requisite to make the execution of the duties of your office, so far as was in my power, acceptable to the Government, the court, and the public.

If you assent to the statement of the account which I have thus made out, it is most important to me to know it immediately. If you do not assent to it, it is equally important that there should be no delay, for it will then be absolutely necessary for me instantly to seek some other occupation.

Awaiting your reply, which I hope will not be delayed beyond to-day, I am your most obedient friend and servant,

P. H. MINOR.

And whereas afterwards, to wit, on the eighth day of May, in the year eighteen hundred and fifty, the said defendant, by his attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law, in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, are hereby transmitted to the said Supreme Court accordingly.

In testimony whereof I have hereto subscribed my name, and affixed the seal of the said court, this 28th day of November, A. D. 1851.

[L. S.]

JOHN A. SMITH, *Clerk*.